

ASSEMBLY BILL

No. 2901

Introduced by Assembly Member Wolk

February 24, 2006

An act to add Chapter 26 (commencing with Section 14990) to Division 7 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 2901, as introduced, Wolk. Mercury monitoring and remediation.

Under the Porter-Cologne Water Quality Control Act, the State Water Resources Control Board and the California regional water quality control boards are the principal state agencies with regulatory authority over water quality. Under the federal Clean Water Act, each state is required to identify those waters for which prescribed effluent limitations are not stringent enough to implement applicable water quality standards and to establish, with regard to those waters, total maximum daily loads, subject to the approval of the United States Environmental Protection Agency, for certain pollutants at a level necessary to implement those water quality standards.

This bill would enact the Mercury Monitoring and Remediation Act. The bill would establish the Mercury Monitoring and Remediation Fund in the State Treasury to be administered by the state board. The bill would authorize the state board to expend the money in the fund, upon appropriation by the Legislature, for grants for mercury monitoring, projects that reduce mercury levels, certain cost-sharing incentive payments, public education and outreach, and assistance to local public entities and nonprofit organizations for the development and implementation of mercury monitoring and remediation plans.

The bill would require the state board to prioritize remediation actions in the implementation plan of each mercury total maximum daily load. The bill would prohibit the state board from implementing a remediation action unless the benefits of the action justify the costs, as specified. The bill would prohibit the state board from proceeding with an implementation plan prior to the completion of certain state-funded studies. The bill would prohibit the state board from requesting local public entities to pay for studies or remediation actions that are related to mercury levels for which those entities are not directly responsible.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature hereby finds and declares all of
2 the following:
- 3 (a) Fish that contain elevated levels of methylmercury may
4 harm the health of people who consume large quantities,
5 especially women of childbearing age or children 17 years or
6 younger, as well as piscivorous wildlife.
- 7 (b) The United States Environmental Protection Agency has
8 required the State Water Resources Control Board to establish
9 mercury total maximum daily loads for 69 California waterways
10 listed as impaired for mercury under the Clean Water Act.
- 11 (c) The California regional water quality control boards,
12 overseen by the State Water Resources Control Board, have
13 completed, or are preparing, the total maximum daily loads.
- 14 (d) The total maximum daily loads set numeric objectives that
15 local entities must meet for mercury in sediment, water, and fish
16 tissue. The total maximum daily loads include implementation
17 plans that require local entities to pay for specific monitoring and
18 remediation activities.
- 19 (e) Elevated mercury in California waterways is primarily the
20 result of mining activities that occurred during the latter half of
21 the 19th century and natural erosion from mercury-enriched
22 watersheds, and not the result of recent or current local actions.
- 23 (f) The state and federal government have a financial
24 obligation to help local entities reduce mercury levels since local

1 entities are not responsible for the presence of mercury in
2 targeted watersheds.

3 SEC. 2. It is the intent of the Legislature to do all of the
4 following by the enactment of this act:

5 (a) Encourage mercury monitoring and remediation efforts
6 that complement, rather than conflict with, efforts to improve
7 flood management, prevent erosion and control runoff, and
8 enhance aquatic and riparian ecosystems at the local level.

9 (b) Provide incentives to local entities to implement programs
10 to reduce mercury and methylmercury levels in mercury-enriched
11 watersheds.

12 (c) Provide incentives to encourage farming and ranching
13 practices that help reduce mercury levels in mercury-enriched
14 watersheds.

15 (d) Establish a fund for mercury monitoring and remediation,
16 from which appropriations for mercury monitoring and
17 remediation can be made.

18 (e) Provide guidelines to the State Water Resources Control
19 Board regarding the development and implementation of total
20 maximum daily loads for mercury.

21 SEC. 3. Chapter 26 (commencing with Section 14990) is
22 added to Division 7 of the Water Code, to read:

23
24 CHAPTER 26. MERCURY MONITORING AND REMEDIATION
25

26 14990. This chapter shall be known and may be cited as the
27 Mercury Monitoring and Remediation Act.

28 14990.2. Unless the context requires otherwise, the
29 definitions set forth in this section govern the construction of this
30 chapter.

31 (a) "Fund" means the Mercury Monitoring and Remediation
32 Fund established by Section 14990.4.

33 (b) "Local public entity" means any city, county, city and
34 county, district, or other local governmental entity if the entity is
35 otherwise authorized to acquire and hold title to real property.

36 (c) "Nonprofit organization" means a tax-exempt nonprofit
37 organization that meets the requirements of subdivision (a) of
38 Section 815.3 of the Civil Code.

(d) “Total maximum daily load” means a total maximum daily load established in accordance with Section 1313(d) of Title 33 of the United States Code.

14990.4. (a) The Mercury Monitoring and Remediation Fund is hereby established in the State Treasury. The fund shall be administered by the state board. Money in the fund may be expended, upon appropriation by the Legislature, for the purposes of this chapter.

(b) Money may be deposited into the fund from donations, funds appropriated by the Legislature, federal grants or loans, or other sources, and shall be expended for the purpose of implementing this chapter, including administrative costs.

(c) The purposes for which money in the fund may be expended by the state board include all of the following:

(1) Grants for mercury monitoring consistent with state priorities and data management procedures.

(2) Grants for mine remediation, erosion control, and other projects that reduce mercury levels.

(3) Cost-sharing incentive payments to private landowners who agree to change land use practices to reduce mercury levels.

(4) Public education and outreach, including public health surveys, by local public entities and nonprofit organizations regarding the public health impacts of high mercury levels.

(5) Assistance to local public entities and nonprofit organizations for the development and implementation of mercury monitoring and remediation plans.

(d) Not more than 10 percent of all grants made by the state board pursuant to this chapter may be used for the purposes described in paragraphs (4) and (5) of subdivision (c).

14990.5. (a) The state board shall prioritize remediation actions in the implementation plan of each mercury total maximum daily load established in accordance with Section 1313(e) of Title 33 of the United States Code. For funding purposes, the state board shall give preference to remediation actions that reduce the highest levels of mercury, such as actions to contain the discharge from a mercury mine.

(b) If the state board determines that it is unable to proceed with a remediation action with regard to a high-priority site before addressing other lower-priority sites, the state board shall explain its reasoning in a public workshop and provide

1 substantial evidence as to why the state board could not address
2 the high-priority site prior to addressing other sites.

3 (c) The state board may not implement a remediation action
4 unless the benefits of the remediation action justify the costs,
5 including negative impacts of the remediation action on activities
6 that benefit the public, such as wildlife habitat restoration or
7 flood management activities.

8 (d) The state board may not proceed with an implementation
9 plan prior to the completion of state-financed studies relating to
10 reducing mercury levels that may affect the implementation plan.

11 (e) The state board may not request local public entities to pay
12 for studies or remediation actions that are related to mercury
13 levels for which those entities are not directly responsible.

14 (f) The state board shall establish mercury total maximum
15 daily loads in a manner that is consistent with the implementation
16 of the state board's agricultural waiver program.